

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
JAIPUR BENCH
S.B. Civil Writ Petition No.2515/07
Sohan Singh & Anr. Vs. State of Raj. &
Ors.

16.04.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Ashvin Garg for petitioner.
Shri S.N. Kumawat for respondent no.6.

Heard learned counsel for the
petitioner and learned counsel for
respondent no.6.

The petitioner has challenged the
no confidence motion dated 16.3.2007 and
the consequential proceedings carried on
against him in the meeting of Panchayat
Samiti held on 16.3.2007.

Shri Ashvin Garg, the learned
counsel for the petitioner argued that
originally SDO, Nagar was appointed as

presiding officer by order of the Chief Executive Officer, Bharatpur dated 28.2.2007. But subsequently the Chief Executive Officer passed another order on 16.3.2007 itself appointing SDO, Kumher (Duty Magistrate, Camp Nagar) as Presiding Officer. It was argued that according to sub-section (4) of Section 37 of the Rajasthan Panchayati Raj Act, 1994 (for short- 'the Act'), the competent authority was required to preside over the meeting but its proviso entitled him to nominate any other person in his place if he was unable to do so. Sub-section (8) of Section 37 of the Act provides that debate on the no confidence motion shall automatically terminate on the expiration of two hours from the time appointed for the commencement of

the meeting, if it is not concluded before expiry of two hours. On the conclusion of the debate or on the expiration of the said period of two hours, whichever is earlier, the motion shall be put to vote. It was argued that in the first place if the SDO, Nagar was not in a position to proceed the meeting, he could appoint any other officer in his place and not the Chief Executive Officer and secondly in the proceeding of the meeting dated 16.3.2007, it has been noted by the SDO, Kumher himself that he received the subsequent order appointing him as the Presiding Officer at 12.34 PM and therefore the proceedings were rendered illegal because the time of the meeting in both the notice dated 28.2.2007 and 16.3.2007 respectively was

indicated as 11.00 AM and it was not physically possible for SDO, Kumher, to travel the distance of 26 kms from Kumher to Nagar and also conclude the meeting upto 1.00 PM on that day. It was therefore prayed that the resolution of no confidence motion carried out against the petitioner on 16.3.2007 be quashed and set aside and the petitioner be declared to have continued as Pradhan of the Panchayat Samiti, Nagar.

Shri S.N. Kumawat, the learned counsel for the respondent no.6 however opposed the writ petition and argued that the motion has been carried out strictly and in accordance with the provisions of Section 37 of the Act and that it was carried out against the petitioner by more than 2/3rd of the present members. In

the democratic process once when the elected representative have decided to unseat the petitioner by the mode prescribed in the law, the petitioner cannot insist on continuation.

Having heard the learned counsel for the parties, I find that the argument that it was only SDO, Nagar who could nominate any other officer in his absence if he was unable to proceed the meeting cannot be accepted in view of the clear language of sub-section (4) of Section 37 of the Act which provides that the competent authority shall preside over such meeting and it is in the event of his inability to do so, then he shall nominate any other officer in his place. It cannot be disputed that the competent authority is the Chief Executive Officer,

Bharatpur, therefore when another officer was required to be appointed, it was the Chief Executive Officer, Bharatpur alone who was competent to nominate any other officer as Presiding Officer in place of SDO, Nagar and therefore this argument has no substance and is accordingly rejected. The second argument that the meeting should have been terminated on expiration of two hours on 11.00 AM and the SDO, Kumher having received his appointment letter at 12.34 PM could not possibly conclude the proceedings upto 1.00 PM on that day also merits rejection. It may be noted that the second order dated 16.3.2007 whereby the Chief Executive Officer appointed SDO Kumher, as the Presiding Officer very categorically mentions that he (S.D.O.)

was at that time Duty Magistrate, Camp Nagar. It indicates that his Camp was at Nagar and therefore he received the order of his appointment order at 12.34 PM at Nagar. It is noted that in the peculiar facts of the case when the first Presiding Officer had to be replaced by another, the time of the meeting i.e. 11.00 AM as indicated in the notice cannot be strictly construed to mean that meeting should have been mandatorily commenced at 11.00 AM as would be evident from the proceedings of the meeting dated 16.3.2007 in which SDO categorically admits that he has received the appointment letter at 12.34 PM, therefore, the meeting could have been commenced thereafter. This cannot be taken as so grave an illegality as may

invalidate the entire proceedings. In the facts of the case, I do not find that the provisions of sub-section (8) of Section 37 of the Act are violated either.

I do not find any merit in this writ petition. The writ petition stands dismissed with no order as to costs.

(Mohammad Rafiq), J.

Rs/-